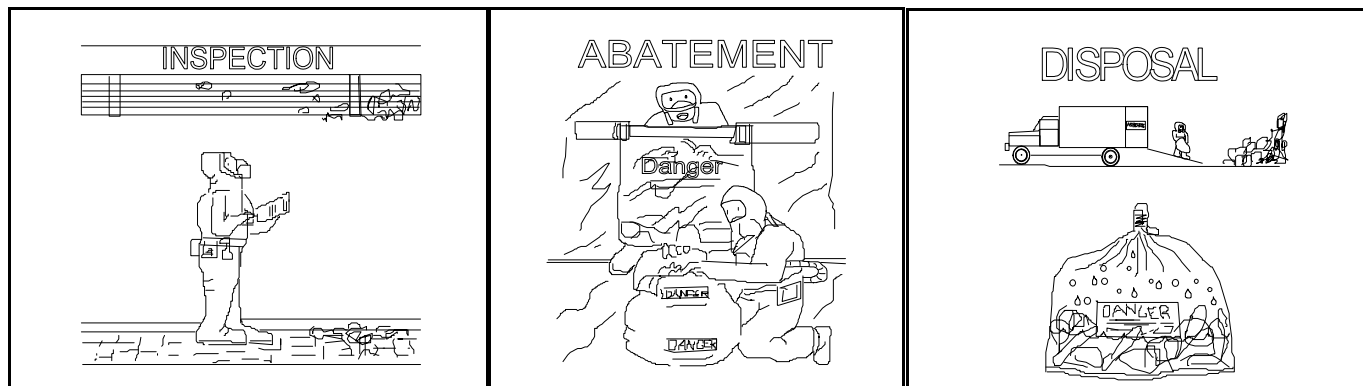

THE ASBESTOS REGULATOR



NEWSLETTER FOR ASBESTOS PROJECT OPERATORS IN THE STATE OF UTAH

No. 4

UTAH DIVISION OF AIR QUALITY

March 2000

Rule Revision

Revision of Utah Asbestos Rule

After over a year of work, a new version of the Utah Asbestos rules has been presented to the Utah Air Quality Board and approved for public comment between March 1 and March 31, 2000. The public is invited to submit comments in writing and to participate in a public hearing on the proposed rules on March 21, 2000.

The current asbestos rule, R307-801, was written in 1990 and has undergone numerous minor revisions which have rendered it difficult to read or understand. Furthermore, some requirements have been rendered obsolete by the evolution of other Federal EPA and OSHA regulations. Thus, the rule was in need of revision. The rule revision started when we invited the regulated community to participate freely in an asbestos rules advisory committee. The participation of the dedicated members of this committee has been invaluable in rewriting this rule, and we would like to extend our appreciation for their significant efforts and time spent. This committee began meeting over a year ago (August 1998), and has met 20 times since then. In the initial meetings we discussed the current rule line-by-line and found that so many changes

were needed that a complete rewrite would be necessary. We started by writing an outline, then a rule text that we discussed and revised through many drafts. Writing this rule in committee was a process of balancing the diverse, at times competing interests of the members of the regulated community with the interest of the environment and public health. We feel that the new rule is a great improvement over the current rule, and satisfies the needs of the regulated community while protecting the public from exposure to asbestos, and meeting the state's obligation to EPA.

Changes in the Proposed Rule

The new rule differs from the old one in three ways. 1) the proposed rule has been built from the ground up, 2) some requirements have been deleted, and 3) other requirements have been added. A summary of changes is provided below, but you should evaluate the rule yourself. The proposed rule and accompanying documentation is available at:

<http://www.rules.state.ut.us/publicat/bulletin/2000/20000301/22668.htm>

Changes in the presentation of the rule are a major improvement. The principle improvement is that the rule is organized into a logical series of steps. We expect this reorganization to markedly improve the readability of the rule. In addition to reorganizing the rule, we have also rewritten the rule from the outline. This change also improves the readability and has made it much more user friendly.

Some substantive requirements were dropped because they were thought to be unnecessarily burdensome. Accounting for all of the requirements that have been dropped and added, we estimate a substantial cost savings to the regulated community. Other substantive requirements were dropped because they conflict with more recent regulations by other agencies, such as OSHA. For example, the new rule does not require that a person have extensive experience as an asbestos consultant before obtaining a Utah asbestos consultant certification. The requirement for experience has proven particularly costly to facility owners, who would like to train their own, very competent maintenance staffs to perform some of these functions. The benefits of these experience requirements are dubious—they may not lead to better inspections. Another example is that the current rule regulates the disturbance of any amount of asbestos. The new rule sets a lower limit (3 linear or square feet), below which asbestos removal is not regulated. This allows facility owners to train their own maintenance staff to remove very small amounts of asbestos-containing materials while following OSHA regulations, during the course of their regular activities.

There are also a few substantive requirements that have been added to the asbestos rules to address long-standing problems with asbestos work. For example, we have added minimum requirements for how an asbestos inspection is to be conducted and documented. The committee felt that the asbestos inspection is the first step in

ensuring that asbestos-containing materials are handled properly. Thus, it is important that each inspection be conducted with a standard of thoroughness. Another added requirement is a streamlined notification procedure for smaller than NESHAP-sized asbestos projects (a NESHAP-sized asbestos project is an asbestos project involving the disturbance of more than 260 linear feet or 160 square feet). This will allow staff to better monitor the compliance of a number of asbestos projects that are currently regulated, but are conducted without the knowledge of DAQ staff.

Public Comment Process

On February 9, 2000, the Air Quality Board proposed the rule for public comment and scheduled a public hearing.

The Public comment period is a time that anyone can submit a written comment about the proposed rules, while the public hearing is a meeting that anyone can attend and voice comments. The following schedule will provide times and locations of important meetings and other information to help you participate in the comment process:

March 1 (through March 31), 2000 Public Comment Period: comments should be sent to Ursula Kramer, Executive Secretary Utah Air Quality Board, Attn: Asbestos Rule, Box 144820, Salt Lake City, UT 84114-4820.

March 21, 2000 Public Hearing: The hearing will be conducted at 1:30 PM in Room 201 building 2, 168 North 1950 West, Salt Lake City. The public is welcome to make comments and ask questions. The hearing officer may be a member of the Air Quality Board or a member of the staff. An additional staff member will be on hand to answer questions and address comments.

After March 31, 2000: Staff will compile and review all comments, both oral and written, and

prepare written responses. A summary of the comments and responses will be presented to the board along with any staff recommendation to change the rule text. At that time the staff may recommend final adoption.

Asbestos Activities

NESHAP and State Rules

Inspectors from the Division of Air Quality conduct inspections of asbestos removal projects, demolitions, landfills and complaints. During the Federal fiscal year starting October 1, 1998 and ending September 30, 1999 the Division conducted 142 inspections. The Division expects to conduct a similar distribution of inspections during the current year.

Demolition inspections	48
Abatement inspections	65
Complaint inspections	24
Landfill inspections	5
Total inspections	142
Enforcement actions	28
Notifications	1021
Phone Calls	6890

Enforcement actions include; warnings, Notices of Non-Compliance and Notices of Violation.

The enforcement actions were for all types of issues, however there are a few areas that seem to generate a large number of compliance issues, namely:

- 1) Notification violations, particularly revising notification to reflect accurate start dates
- 2) Failure to inspect prior to starting a renovation
- 3) Labeling of asbestos waste
- 4) Demolition without notification

All of these areas are receiving increased attention and will continue to be closely watched in the future.

Asbestos in Schools

During the Fiscal Year 1999 (FY99), many changes such as personnel rotations, and policy changes, have occurred. Bryce Bird was selected as the new manager of the Hazardous Air Pollutants Section (HAPS). Ben Dattilo, Sarah Malluche and Gregg Hudson are conducting AHERA inspections (public and private schools) throughout the state.

From October 1, 1998 to September 30, 1999, a total of 35 AHERA inspections were completed. Seven course provider audits were conducted. Of the 35 AHERA inspection, only 3 violators were observed! All 7 of the course providers were approved. Only 10 management plans were submitted for approval. This brings up an important issue: if your school district has constructed a new school building or portable building, the building must have a management plan, even if the school does not contain any asbestos! An architect's letter, the AHERA cover letter, and annual notification to parents, teachers, students, and building occupants must be included. If you have a new school in your district, please submit the management plan for approval.

Overall, the inspections appear to be going very well. The schools are complying with AHERA, as shown by the decrease of violations found during the inspections. If you have any questions or concerns with asbestos in your schools, do not hesitate to contact DAQ.

Certification Cards

In the near future we will be issuing a redesigned certification card. A new card will be required for all certifications and renewals. Digital photographs are placed onto the certification card. We can take your picture at our office, accept a digital picture file or scan a photograph. The new cards provide better tracking for us and will include all certified disciplines on one card.

Compliance Issues

Notifications

The regulated community is responsible for submitting notifications for asbestos abatement projects and for demolitions of structures and facilities to the Executive Secretary of the Air Quality Board. In order for us to review the many notifications that we receive in an accurate and timely fashion we require that notifications be submitted on a form that we have designed or something very similar. These forms can be obtained from the Internet at:

www.deq.state.ut.us/eqair/haps/ASBESTOS/forms/index.htm, from the state asbestos rules packets, from our office located at 150 N 1950 W, SLC or you can call us at 801-536-4000 to get a copy of the latest form. We will provide you paper or electronic versions of the forms at your request and we will also email them to you upon request.

The last revision of the notification forms was in June 1999, when all of the forms were reviewed and changes were made. Most owner/operators have switched over to the new forms with little difficulty, however there are still some hold outs using the old forms. We would like to strongly encourage everyone to use the new forms and prevent any project delays resulting from the required resubmitting of incorrect forms. After the first reminder, notifications will be rejected if submitted on the wrong form or in the wrong format.

The notifications were developed using an Excel spreadsheet in order to make them more user friendly and to make them much more functional and shorter than the old forms. The average notification form length was cut in half and many information items were reorganized to allow a streamlined completion of the form. If you have any problems, suggestions or

complaints about the forms as they are now, please contact any of the asbestos staff.

Utah Asbestos Determinations

How do you count ten working days?

Effective Date: February 8, 1999

Based on an EPA determination, asbestos projects subject to a 10-working day notification in Utah can commence on or after the 11th working day (week day) counted from day 1, which is the day that the notification is postmarked or hand carried to DAQ. In other words, the project may begin two weeks (on the same day of the week) or after, from the day that the notification is postmarked or hand delivered to DAQ. "Working day means Monday through Friday and includes holidays that fall on any of the days Monday through Friday." See Asbestos NESHAP Regulations CFR 61 Subpart M—National Emission Standard for Asbestos § 61.141 Definitions.

Is the removal of mastic a regulated activity?

Effective Date: February 8, 1999

A previous DAQ policy considered solvent mastic removal to be an unconditionally regulated activity. That policy is no longer in effect. Consistent with an EPA determination, the long standing policy is that if asbestos-containing material is friable or is rendered friable, or is subjected to grinding, sanding, sawing or abrading, then it is regulated (RACM). Accurate determination of friability and proper handling of regulated asbestos-containing material is always the responsibility of the asbestos project owner/operator.

Remember, OSHA rules still apply and are unaffected by this policy.

"Regulated Asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become

friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart." "Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM." See Asbestos NESHAP Regulations CFR 61 Subpart M - National Emission Standard for Asbestos § 61.141 Definitions.

Friability vs Regulated

Findings made this past year indicate the need to discuss the regulation of Category 1 and 2 nonfriable Asbestos-containing Materials. A meeting of the Asbestos Advisory Committee is scheduled on April 11, 2000 at 10:00 AM in Building 2, 168 N 1950 West, SLC. The purpose of the meeting is to discuss policy issues and the result of the meeting will be a policy recommendation to present to the Executive Secretary on how to consistently handle these materials. Below is a discussion of the current issues. In addition, the removal of floor tile and mastic has been scheduled as a major topic for discussion at the national meeting for asbestos regulators on April 16-19, 2000. Input from the advisory committee on these topics will be appreciated in preparation for the national meeting.

The use and definition of friability or friable differs depending on regulation, however the core concept and the designation of persons

allowed to make the determination remains the same. Certified Inspectors must assess asbestos-containing materials that are crumbled, crushed or reduced to powder or fine particulate when dry to be friable and subject to regulation, if greater than one percent asbestos. Inspectors must assess asbestos-containing materials that will be converted, by the forces reasonably expected to be employed, to powder or fine particulate when dry to be friable and regulated, if greater than one percent asbestos (40 CFR 61.141, 40 CFR 763.83 and UAC R307-801).

Regulated Asbestos-containing Material, as mentioned above, includes friable ACM, Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material.

The owner or operator is responsible to determine if asbestos material is or will be regulated as a result of the activity being performed. The NESHAP for Asbestos, 40 CFR 61.145(a) requires that prior to demolition or renovation, a thorough inspection be completed to determine the presence or potential generation of regulated asbestos-containing material. Proposed regulations require pre-renovation or pre-demolition inspection reports which document the identification and assessment of the condition of asbestos-containing materials. If at any time during the project it is determined the inspection was not thorough or did not provide the required information, an inspector must be employed to complete the assessment and provide the required information.

Friability, Fibers and State Rules

Several inspectors and project designers have indicated that floor tile and mastic removal does not release fibers no matter what method is used to remove the material, and therefore should never be regulated. Under the constraints of

current EPA asbestos regulations, **the release of fibers to the air is not at issue when an inspector determines if the material has become regulated.** If the dry material: can be crumbled, crushed or reduced to powder after touched by the inspectors hand; or has been subjected to sanding, grinding, cutting, or abrading; or has a high probability of becoming crumbled, pulverized, or reduced to powder by the forces acting on the material; the resulting material is regulated.

Issues such as the difference between broken into small pieces and crumbled; what is abrading, etc; and recommendations for topics to forward to the national asbestos meeting will be discussed by the advisory committee on April 11, 2000.

If you are interested in joining an email list to receive information on the activities of the advisory committee, respond to: ryoung@deq.state.ut.us with you email address.

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Certification cards, Notification revisions

We would like to introduce two new staff members.

Rebecca Young joined the section on February 14th. Rebecca will be working with our various databases, processing asbestos and lead-based paint certification cards, processing requests for information, providing lists and updating notification revisions.

Gregg Hudson will join the section on March 20th. He previously worked for the Oklahoma Department of Mines and prior to that worked as an environmental consultant. Gregg will be working as an inspector in the asbestos state rules, NESHAP and AHERA programs.

Asbestos Regulator

This *Asbestos Regulator* is the fourth in a series of informational newsletters for the asbestos industry in the State of Utah. The newsletter is designed to be a forum for sharing information between the Division of Air Quality and the regulated community.

Please let us know what you think. If there is anything that you like, or you would like to see added to this format, drop us a letter and we will make this newsletter suit your needs.

Utah Division of Air Quality

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www.deq.state.ut.us/eqair/haps/index.htm